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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,637	11/21/2003	George Hatzikostantis		3472

49716 7590 05/10/2005
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EXAMINER

CHIU, RALEIGH W

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

Office Action Summary	Application No. 10/719,637	Applicant(s) HATZIKOSTANTIS, GEORGE	
	Examiner Raleigh Chiu	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 2-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

1. In claim 1, line 19, "primate" should be changed to --primary--.
2. In claim 1, fifth line from end, "lase" should be changed to --laser--.

Election/Restrictions

3. Applicant's election with traverse of species "a" (Figures 1-6) in the reply filed on 29 March 2005 is acknowledged. The traversal is on the ground(s) that a complete search of one species would require a complete search of the other species. This is not found persuasive because it is not necessary to show a separate status in the art or separate classification in an election of species requirement. Further, despite the fact that applicant has failed to show how such a search of one species would require a search of the other species, applicant has not shown how the species are not considered to be patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

4. Claim 8 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there

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being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 29 March 2005.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the battery case removably coupled to the laser casing (claims 1 and 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to

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show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102 and 103

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

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matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 6,059,668 (Marley, Jr., hereinafter Marley).

Regarding claim 2, Figures 1-2 of Marley shows the recited rod 23. Lights 27,28 correspond to the recited encased lasers.

Regarding claim 9, the Marley lasers are considered to be inherently capable of being able to project to parallel lines as a tunnel when the lasers are oriented in the same direction.

9. Claims 2, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,776,007 (Kendall et al., hereinafter Kendall).

Regarding claims 2 and 10, Figures 5-6, show the recited rod 27 removable casing 61 (also, see Figure 14a) and laser 33.

Regarding claim 4, the shape of casing 61 naturally provides a depressing mechanism that is capable of activating and deactivating the on/off switch of laser 33. See Kendall at column 6, lines 42-62.

10. Claims 3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendall as applied above.

Regarding claim 3, portable lasers are old and well-known in the art to be battery-powered. As such, it would have been

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an obvious matter of choice to modify the Kendall device by having a removable battery case, since applicant has not disclosed that having this specific arrangement solves any stated problem or is for any particular purpose and it appears that the Kendall device would perform equally well with any type of battery case.

Regarding claim 5, the exact position of the Kendall laser casing 61 is slidably adjustable along the rod via thumbscrews but Kendall does not explicitly disclose stickers. See column 6, lines 42-62. However, the problem of reducing the time to set up devices is generally well-known in the sports practice art. Further, hash marks and stickers are old and well-known indicators used in combination with adjustable components to mark specific positions to save set-up time. Therefore, it would have been obvious to one of ordinary skill in the art to provide stickers with the Kendall laser device for the purpose as discussed above.

Regarding claim 6, it would have been obvious to one of ordinary skill in the art to provide a secondary tube removably attached to the rear end of rod 27 at a downward ninety degree angle to provide an additional leg for further supporting the device on the ground.

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Regarding claim 7, Kendall attaches the casing to the rod with adjustable screws but does not employ the specifically-recited clip. However, because these two fasteners were art-recognized equivalents at the time of the invention in those applications where it is immaterial how the casing is attached to the rod, one of ordinary skill would have found it obvious to substitute a clip for the screws of Kendall.

Applicant has done no more than to select a plurality of individual features from the prior art and incorporate them into a unitary feature without materially altering the structure or function of each individual feature and without producing any new or unexpected result. To select features from the prior art to effect results expected from these features is within the purview of 35 USC 103.

Allowable Subject Matter

11. Claim 1 is allowed.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh

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Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich, can be reached on (571) 272-4415.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu
Primary Examiner
Technology Center 3700

RWC:dei:feif
28 April 2005